

IN THE IOWA DISTRICT COURT IN AND FOR DUBUQUE COUNTY

DUBUQUE COUNTY BOARD OF REVIEW,)	
)	CASE NO. CVCV099355
Petitioner,)	
)	
vs.)	JUDGMENT
)	
PROPERTY ASSESSMENT APPEAL BOARD,)	
)	
Respondent.)	

This matter came before the Court for hearing on June 21, 2011. The Petitioner was represented by Attorneys Mark Hostager and Lyle Gallart. The Respondent was represented by Attorney Jessica Norris.

FINDINGS OF FACT

Matthew Mescher is the owner of a 6.59 acre parcel of property located at 29217 Lansing Road, Dyersville, Iowa. The property contains a house, as well as various detached garages, barns, machine sheds, and other outbuildings. Mescher lives in the house and it is his residence. Mescher purchased this property in 2006. Previously, Mescher's property had been part of a larger farm. In 2000, six years before Mescher purchased his property, the 6.59 acre parcel was subdivided from the larger farm. All of the property was classified as agricultural. However, according to the Dubuque County Assessor, the subdivision of the property in 2000 should have triggered a classification change from agricultural to residential on the 6.59 acre parcel. The assessor apparently indicates that the reclassification was simply missed or overlooked. Accordingly, when Mescher purchased his 6.59 acre parcel in 2006, it was classified as agricultural property. Some time shortly after Mescher acquired the property, the Dubuque County Assessor reclassified the property as residential. Mescher now challenges that reclassification.

Mescher claims that he would not have purchased the property if it wasn't classified as agricultural. Approximately 5.59 acres (85% of the total acreage) of the property are used by Mescher in his horse-boarding operation. Mescher does not own any of his own horses, but he boards horses for other people for a fee of \$175 per horse per month. At the time of the hearing in this matter, Mescher was boarding four horses. He estimated his expenses for feeding the horses are approximately \$30 per month total.

One of the barns on the Mescher property is used to board horses and store hay. A machine shed on the property is used as an indoor riding area for the boarded horses. A smaller machine shed is used to store smaller equipment used in the boarding operation. For example, Mescher stores fans which are used to cool the horses. An open-sided building on the property is used to store manure and bedding. It is also used as a shelter for the boarded horses. Mescher leases an adjoining ten-acre parcel of land for \$1,200 per year, and he uses this land as pasture ground and for growing hay to feed the horses.

On the Schedule F attached to Mescher's income tax returns, he is allowed to claim various expenses, and he is allowed to depreciate certain items of equipment. For income tax purposes, Mescher has shown a loss on his Schedule F in 2006, 2007, 2008, and 2009. (No information was provided regarding 2010). Mescher indicates that he anticipates continuing to operate at a net taxable loss.

CONCLUSIONS OF LAW

A District Court judicial review of an administrative decision is limited to the correction of errors at law. Iowa Code §441.39. The Court may affirm the agency action or remand to the agency for further proceedings. Iowa Code §17A.19(10). The Court shall reverse, modify, or grant other appropriate relief if substantial rights of the person seeking relief have been prejudiced because the agency action was:

- a. Unconstitutional on its face or as applied or is based upon a provision of law that is unconstitutional on its face or as applied.
- b. Beyond the authority delegated to the agency by any provision of law or in violation of any provision of law.
- c. Based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency.
- d. Based upon a procedure or decision-making process prohibited by law or was taken without following the prescribed procedure or decision-making process.
- e. The product of decision making undertaken by persons who were improperly constituted as a decision-making body, were motivated by an improper purpose, or were subject to disqualification.
- f. Based upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a whole. For purposes of this paragraph, the following terms have the following meanings.
- g. Action other than a rule that is inconsistent with a rule of the agency.
- h. Action other than a rule that is inconsistent with the agency's prior practice or precedents, unless the agency has justified that inconsistency by stating credible reasons sufficient to indicate a fair and rational basis for the inconsistency.

- i. The product of reasoning that is so illogical as to render it wholly irrational.
- j. The product of a decision-making process in which the agency did not consider a relevant and important matter relating to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action.
- k. Not required by law and its negative impact on the private rights affected is so grossly disproportionate to the benefits accruing to the public interest from that action that it must necessarily be deemed to lack any foundation in rational agency policy.
- l. Based upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law whose interpretation has clearly been vested by a provision of law in the discretion of the agency.
- m. Based upon an irrational, illogical, or wholly unjustifiable application of law to fact that has clearly been vested by a provision of law in the discretion of the agency.
- n. Otherwise unreasonable, arbitrary, capricious, or an abuse of discretion.

Iowa Code §17A.19(10).

“Substantial evidence” means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance. Iowa Code §17A.19(f)(1).

The burden of demonstrating the required prejudice and the invalidity of agency action is on the party asserting invalidity. Iowa Code §17A.19(8)(a).

An assessor determines the value of property for taxation purposes. Iowa Code §§ 441.17(2), .21(1)(a). Property can be classified as residential, agricultural, commercial, industrial, and other. Iowa Code § 441.21(9). The classification of property is governed by Iowa Administrative Code rule 701-71.1. The classification is “based upon the best judgment of the assessor following the guidelines set forth in this rule and the status of the real estate as of January 1 of the year in which the assessment is made.” Iowa Admin. Code r. 701-71.1(1). Property should be assessed “according to its present use and not according to its highest and best use.” Id.; Soifer v. Floyd County Bd. of Review, 759 N.W.2d 775, 779 (Iowa 2009).

Agricultural real estate shall include all tracts of land and the improvements and structures located on them which are in good faith used primarily for agricultural purposes except buildings

which are primarily used or intended for human habitation as defined in sub-rule 71.1(4). Land, and the nonresidential improvements and structures located on it, shall be considered to be used primarily for agricultural purposes if its principle use is devoted to the raising and harvesting of crops or forest or fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit. Iowa Admin. Code r. 701-71.1(3).

The rules, as pertaining to this issue, do not define “good faith.” Thus the Iowa Supreme Court has recognized other factors in determining whether a taxpayer is using a property in an agricultural manner and in good faith. Those factors are:

1. Whether the parcel is set off and awaiting development;
2. What permitted uses the current zoning allows;
3. If the parcel is being offered for sale;
4. How the land conforms to other surrounding properties;
5. What is the actual amount of income produced from the property and from what sources;
6. What is the highest and best use of the property.

Colvin v. Story County Board of Review, 653 N.W.2d 345, 350 (Iowa 2002).

Pursuant to Iowa law regarding injury to livestock, livestock is defined as “an animal belonging to the bovine, caprine, *equine*, ovine, or porcine species, ostriches, rheas, emus, farm deer, or poultry.” Iowa Code §717.1(2) (emphasis added). According to the Webster’s Dictionary, “livestock” is defined to be “domestic animals kept for farm purposes, especially marketable animals, such as cattle, horses, and sheep.”

JUDGMENT

There is no evidence in the record that the property in question is set off or awaiting development. There is little evidence regarding the permitted uses of the current zoning. However, the Court certainly infers that Mescher’s horse-boarding operation would not be permitted under the current residential zoning classification. Nothing suggests that Mescher’s property is currently for sale. The property was parceled off from a larger contiguous piece, which larger piece continues to be used for agricultural purposes. Further, Mescher’s property has been used to board or maintain horses for a number of years, including prior to Mescher acquiring it. It is undisputed that Mescher has income from the property as a result of his horse-boarding operation. It is also undisputed that Mescher shows a net taxable loss from this operation. There is essentially no evidence as to the best and highest use of the property, although the Court notes that the property has been used to maintain or board horses for quite some time.

The Property Assessment Appeal Board (PAAB) specifically found Matthew Mescher to be sincere, honest, and credible in his testimony. PAAB’s decision that Matthew Mescher’s 6.59 acre

parcel is properly classified as agricultural is supported by substantial evidence and cannot be said to be illogical or wholly irrational. Mescher purchased the property when it was classified as agricultural, and he has, since he first purchased it, utilized a majority of the property for feeding, walking, boarding, and caring for horses. The rule requires that Mescher's use be for "intended" profit, not actual profit. Mescher repeatedly testified that he was realizing "positive cash flow" from his horse-boarding operation, and PAAB found that Mescher is actually profiting from the operation. This finding is reasonable and is supported by substantial evidence. Mescher claims that his boarding operation helps him pay his mortgage. At least a portion of his mortgage would undoubtedly be a deduction on his Schedule F, thus reducing the net taxable income of the operation. It would be difficult to accept that Mescher leases a separate 10-acre parcel, harvests hay from that parcel for the horses to eat, and boards approximately four horses – all because he wishes to keep his agricultural land classification.

Based upon the applicable law, and for all of the reasons stated herein, the decision of the Property Assessment Appeal Board is AFFIRMED. The property is question reclassified as agricultural and valued according to the law. Court costs are assessed to the Appellant.

DONE AND ORDERED: July 8, 2011

THOMAS A. BITTER, JUDGE
FIRST JUDICIAL DISTRICT OF IOWA

Order has been electronically filed ☒X___

Distributed to: _____
County Attorney
Attorney Jessica Norris

On: _____ By: _____

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